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June 8, 2017

SUBMITTED ELECTRONICALLY VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Re: **Written *Ex Parte* Presentation**

WT Docket No. 16-319, *Bresnan Communications, LLC, Request for Waiver*

Dear Ms. Dortch:

On May 19, 2017, the Rural Wireless Association, Inc. (“RWA”) continued its baseless and misleading campaign to reverse the Wireless Telecommunications Bureau’s (“Bureau”) December 21, 2016 decision allowing T-Mobile to provide additional wireless service competition to consumers in Montana and Wyoming.^{1/} The Commission should promptly reject RWA’s attempt to *reduce* service to the public. And the Commission should warn RWA against submitting further frivolous pleadings and letters in this matter. It has already wasted valuable Commission resources by launching excessive, unwarranted, and unsupported challenges to the Waiver Letter. None of its filings have added anything substantive to the record, but are instead an abuse of Commission process in a blatant attempt by RWA and its members to slow or block competitive services in Montana. RWA’s continued abuse of the process should not be allowed to continue.

T-Mobile’s Actions to Date Confirm the Value of the Bureau’s Action.

In its most recent *ex parte* letter, RWA recognizes that T-Mobile has done what is required under the terms of the waiver, but then makes the totally unsupported and illogical leap that T-Mobile’s rapid rollout of service means that T-Mobile has done nothing since filing its initial notification and has no intention of bringing new service to rural Montana.^{2/} Yet bringing new service to

^{1/} See Letter from Caressa D. Bennet, General Counsel, Rural Wireless Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT-Docket No. 16-319 (filed May 19, 2017) (“RWA *Ex Parte*”); see also Letter from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Steve B. Sharkey, T-Mobile License LLC, 31 FCC Rcd 13379, WT-Docket No. 16-319, rel. Dec. 21, 2016 (“Waiver Letter”).

^{2/} RWA *Ex Parte* at 1.

rural America is exactly what T-Mobile has done so far and will continue to do.^{3/} In fact, T-Mobile has outperformed the Bureau's requirements and will continue to do so. The Waiver Letter was issued on December 21, 2016. Within approximately 60 days—two months earlier than the Bureau required, and within days of actually obtaining the licenses—T-Mobile satisfied its first performance milestone.^{4/} And while T-Mobile was required to cover 35% of the area licensed under call sign WQJQ807, it reported that it already covers 62% of the area—nearly twice what was required.^{5/} RWA's claim that T-Mobile will not meet its coverage obligations based on T-Mobile's performance so far is therefore inexplicable.

Contrary to RWA's baseless claim that T-Mobile will not do what it has promised to do -- including promoting competition, bringing retail competition, benefiting tribal lands, promoting fiber deployment, helping to close the rural coverage gap, and bringing service to sparsely populated areas of Montana—T-Mobile has reached, or made significant progress toward reaching, all of these goals. T-Mobile has already established a retail presence in Montana^{6/} and is on track to expand it, has already contracted to have fiber deployed to previously unserved areas to support deployment of its network, and has entered into agreements for siting and construction of facilities that will significantly exceed the waiver requirements. RWA would have no way of knowing any of this, however, because T-Mobile is not required to file its next report until July 21, 2017. RWA appears to be intentionally filing misleading and false information with the Commission in its continuing effort to interfere with T-Mobile's efforts to bring greater competition to the residents of Montana.

RWA's Inflammatory Attack on T-Mobile's Coverage is Merely an Attempt to Divert the Commission's Attention from the Failure of its own Members to Provide Robust Service to Montana and to Protect those Members from Competition.

RWA claims that T-Mobile “overstates” its coverage in Montana.^{7/} RWA is wrong on the merits of its claim, and the Commission should instead focus on the failure of RWA's members to provide robust services to the citizens of Montana. Unlike T-Mobile, which far exceeded the buildout requirements well ahead of its first deadline, it appears that RWA's members in Montana may not have met the interim construction requirements for their licenses, despite having had the licenses for some six years, and are misrepresenting to their customers the type of service that they provide (fixed versus mobile)—or else they have intentionally filed misleading

^{3/} Contrary to RWA's claims, while T-Mobile expects to provide new service to currently *unserved and underserved* areas, that was not the basis of the Bureau's action. Instead, the Bureau provided relief to T-Mobile so that it could, as a new wireless carrier, “increase competition and consumer choice.” Waiver Letter at 1.

^{4/} See ULS File No. 0007667068.

^{5/} *Id.*

^{6/} In fact, Montana Senator Daines attended the opening of the first T-Mobile store in Montana. See Steve Daines (@SteveDaines), TWITTER (Mar. 16, 2017, 3:29 PM), <https://twitter.com/SteveDaines/status/842503205980459008>; see also Kevin Maki, *Wireless Coverage to be Expanded in Rural Montana*, NBC MONTANA (Mar. 16, 2017, 10:05 PM), <http://www.nbcmontana.com/news/keci/wireless-coverage-to-be-expanded-in-rural-montana/399985529>.

^{7/} RWA *Ex Parte* at 2.

statements with the Commission in an attempt to save their licenses. In either case, the FCC should investigate.

The robustness of T-Mobile's buildout is clear. In the construction notification submission for station WQJQ807, T-Mobile used a Maximum Allowable Path Loss ("MAPL") that projected at least 2 Mbps downlink and 64 Kbps uplink speeds at the cell edge using a 5 megahertz LTE carrier for mobile service.^{8/} The submission noted that real world performance could exceed these speeds.^{9/} This MAPL design was tailored for a -93 dBm Received Signal Strength Indicator ("RSSI"), which is equivalent to a -118 dBm Reference Signal Received Power ("RSRP"). Typically, RSRP is the more common metric for describing LTE signal measurements in a propagation map. There is simply no basis for RWA to assert that this represents only "fringe" or "low quality" coverage.

In contrast, RWA's members in Montana have failed to meet this same level of service. For example, Nemont Communication Inc. ("Nemont"), an RWA member, recently submitted a construction notification for station WQQL772 asserting that "[an] LTE RSRP signal level of -124.1 dBm is considered by Nemont and the Huawei Base-station equipment . . . as the appropriate threshold to provide [service]."^{10/} So, while RWA claims T-Mobile's signal level is unacceptable, its members are significantly below T-Mobile.

Nemont's construction notification further states that "Nemont believes that the FCC's 4G Broadband requirements of 200 KB/S Uplink and 768 KB/S Downlink is a good cell edge minimum throughput value for a commercial LTE fixed wireless RAN."^{11/} Yet Nemont's design is 6 dB – approximately four times weaker and less than half the downlink speed of T-Mobile's reference design that RWA complains is "fringe" coverage.

^{8/} See ULS application File No. 0007667068, Technical Narrative at 1 (filed Feb. 17, 2017). Also included in the design is the use of multiple input and multiple output ("MIMO") antennas and other LTE transmission techniques to enhance coverage and throughput.

^{9/} *Id.*

^{10/} See ULS application File No. 0007601143 (WQQL72), Engineering Statement & Technical Narrative at 5 (filed Dec. 22, 2016). The construction notification for that station, and in fact for all of Nemont's 700 MHz licenses, states that Nemont is providing a fixed 4G LTE service. This permits Nemont to include additional antenna gain of 10 dBi that a mobile service link budget generally does not include, making direct comparisons of link budgets difficult. Nevertheless, this construction notification seems to belie Nemont's advertising and promotional materials, which suggest that it provides a mobile 4G LTE service. And in fact, Nemont does not advertise the Bandrich Bandluxe E500 Fixed Wireless modem or mention the fact that it offers a fixed service on its website or elsewhere. Even worse, a search of the FCC's Equipment Authorization Database reveals that the Bandrich Bandluxe E500 Fixed Wireless Modem is only authorized to operate in the AWS-1, AWS-3, and PCS bands in the United States, not in the 700 MHz band. See FCC ID UZI-P04E68. A review of other Bandrich Fixed Wireless modems that operate in the 700 MHz band (but not specified by Nemont in the construction notification for station WQQL722) indicate the antenna gain for 700 MHz is less than the 10 dBi Nemont claims in the link budget. See FCC ID UZI-35M168.

^{11/} See ULS Application File No. 0007601143 (WQQL772), Engineering Statement & Technical Narrative at 2 (filed Dec. 22, 2016).

Nemont’s construction notifications for other Montana licenses show similar designs that would qualify as only “fringe coverage” under RWA’s reasoning. In its initial submission for station WQNU217, Nemont relies on a signal level of -100.6 dBm RSSI received at the LTE base station, more than 7 dB—or 6 times weaker—than T-Mobile’s -93 dBm, to cover 51% of the licensed geography.^{12/} Nemont later amended its construction notification to rely on a signal level of -97.2 dBm, which is still 4 dB weaker than T-Mobile’s reference design, to cover 35.42% of the licensed geography, barely over the 35% coverage requirement.^{13/}

Further, Nemont’s transmission speed demonstration submitted as part of its construction notification for WQNU217 was also less robust than T-Mobile’s. In its initial construction notification submission, Nemont stated that it was providing 200 Kbps downlink, significantly slower than T-Mobile’s reference design. Nemont’s amended submission, showing a speed of 1 Mbps downlink, is still only half of the speed used by T-Mobile in the downlink and suspiciously fast in the uplink. And T-Mobile provides its service without reliance on the Huawei equipment upon which Nemont’s operations rely, and which has been subject to significant national security concerns, both at the Congressional and transactional levels.^{14/}

Nemont is not the only RWA member that has met performance requirements using less robust service than RWA now claims shows a lack of commitment to serving rural areas. Triangle Communications Systems, Inc. (“Triangle”) submitted a construction notification for station WQJU694 showing an uplink signal strength of -94.65 dBm, the equivalent to a -118 dBm RSRP, which is effectively identical to T-Mobile’s design. And Triangle’s design projects only a 786 Kbps downlink signal and 200 Kbps uplink signal, which is inferior to what T-Mobile provides.

These examples show that, while T-Mobile is moving quickly to deploy service, RWA’s members—which have had their licenses for many years—have failed to deploy the level of service that RWA claims is necessary, and it appears that they have not even meet the interim buildout requirements for the mobile service that they advertise.^{15/} RWA’s rhetoric in this proceeding cannot be reconciled with its members’ behavior. RWA’s arguments are therefore disingenuous, particularly if these under-performing RWA members are the ones that RWA claims, despite no member having stepped forward, *might* have an interest in using the licenses

^{12/} See ULS Application File No. 0007588261 (WQNU217), Engineering Statement & Technical Narrative at 3 (filed Dec. 12, 2016).

^{13/} See *id.*, Amended Engineering Statement & Technical Narrative at 3 (filed May 4, 2017).

^{14/} See, e.g., U.S. House of Representatives Permanent Select Committee on Intelligence, *Investigative Report on the U.S. National Security Issues Posed by Chinese Telecommunications Companies Huawei and ZTE*, 112th Cong., Oct. 8, 2012 (finding that Huawei’s entwinement with the Chinese government poses a potential national security threat); *Sprint, SoftBank Agree to U.S. National Security Deal*, REUTERS TECHNOLOGY NEWS, (May 29, 2013) (discussing that U.S. CFIUS approval of SoftBank’s interest in Sprint was conditioned in part upon the removal of Huawei equipment from the Sprint/Clearwire network over national security concerns).

^{15/} To that end, the Commission should carefully review the pending performance notifications from Nemont (stations WQNU217 and WQNU218) based on the flaws that T-Mobile has identified, including its notification that Nemont is providing a fixed, rather than a mobile, service.

to build out “portions” of the license area at some point in the future.^{16/} RWA’s hypocritical arguments against T-Mobile, particularly in light of the behavior of its members, renders meaningless its mischaracterizations of T-Mobile’s demonstration of service.

Without T-Mobile, There Would Be No Additional Competition.

RWA continues to wrongly imply that its unnamed members would put the spectrum to better use than T-Mobile, this time ridiculously claiming that T-Mobile is holding the spectrum “hostage.”^{17/} As noted above, there is no basis in fact for RWA’s assertion. T-Mobile is providing service to more areas, more quickly, than the Bureau required, and plans to continue exceeding the Bureau’s benchmarks. RWA also continues to ignore that no one—its members or otherwise—attempted to secure the licenses that T-Mobile now holds. RWA has again failed to identify a single member that would provide service using the spectrum that T-Mobile is now using to bring competition to rural areas in Montana and Wyoming. Instead of preventing theoretical, unidentified others from accessing spectrum at some later date, T-Mobile is using the spectrum to serve the public today.

As noted above, T-Mobile continues to make excellent progress toward deploying service and plans to far exceed the requirements of the waiver. So, rather than holding the spectrum hostage, T-Mobile will be providing service to the public earlier than any other provider could, even if RWA were able to identify those theoretical providers. The Commission has announced no plans to re-auction 700 MHz spectrum captured from carriers that have not met construction benchmarks. In order for spectrum to be used by any unidentified other providers, the Commission must engage in the time-consuming process of adopting auction procedures, conducting an auction, and licensing the spectrum—an effort that will far exceed the time by which T-Mobile will have bested the Bureau’s performance requirements.

RWA’s Reliance on T-Mobile’s Position in the Mobility Fund Proceeding Is Misplaced.

RWA argues that T-Mobile’s Petition for Reconsideration of the Commission’s *Mobility Fund Order*^{18/} is relevant to the waiver request because, in that proceeding, T-Mobile asked the Commission to align applicable speed and latency requirements with the realities of providing mobile service in rural and hard-to-serve areas.^{19/} RWA now suggests that T-Mobile’s request for that alignment of rules with reality is somehow inconsistent with T-Mobile’s commitment to bring competitive service to rural Montana.^{20/} Not only, as noted above, does RWA misrepresent T-Mobile’s past and current performance in Montana, but RWA has invented a connection that

^{16/} See, e.g., Comments of the Rural Wireless Association Opposing Requested Waiver, WT Docket No. 16-319, at 4-5 (filed Oct. 26, 2016).

^{17/} RWA *Ex Parte* at 2.

^{18/} *Connect America Fund; Universal Service Reform – Mobility Fund*, WC Docket No. 10-90; WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152 (2017) (“*Mobility Fund Order*”).

^{19/} RWA *Ex Parte* at 3.

^{20/} *Id.*

does not exist between the waiver request and the *Mobility Fund Order* proceeding. Thus, any reference to T-Mobile's Petition for Reconsideration is beside the point here.

The *Mobility Fund Order* proceeding and the waiver request are distinct, wholly unrelated matters. T-Mobile's Petition for Reconsideration of the *Mobility Fund Order* asks the Commission to reassess speed and latency requirements—engineering and technical aspects of the *Order*—to better represent actual mobile service performance across the nation.^{21/} T-Mobile recognizes that the speed and latency requirements adopted in the *Mobility Fund Order* would likely be difficult for all carriers to meet in all areas, and do not reflect the realities of providing service in rural and hard-to-serve areas. With respect to public interest considerations, T-Mobile's Petition for Reconsideration asks the Commission to revise performance thresholds so that they do not inadvertently impede the delivery of broadband services. “[R]econsideration of these aspects of the *Mobility Fund Order* will help bolster participation in the auction, result in significantly more new coverage in rural areas, and further the Commission's goals for Phase II of the Mobility Fund.”^{22/} On the other hand, as previously discussed, the waiver request is about alternative construction benchmarks and buildout requirements for the provision of wireless services in Montana and Wyoming.

Moreover, even if there were some relationship between the *Mobility Fund Order* proceeding and the Bureau's decision regarding the waiver, RWA did not assert any arguments related to T-Mobile's Petition for Reconsideration in its Application for Review. Under the Commission's rules, an Application for Review must “state the questions presented for review”^{23/} and “the factor(s) which warrant Commission consideration of the questions presented.”^{24/} RWA's Application for Review only concerns the acceleration of the end of the license term and construction deadlines for three of T-Mobile's 700 MHz licenses.^{25/} These arguments are distinct from the speed and latency thresholds that T-Mobile asks the Commission to reconsider in the *Mobility Fund Order* proceeding.

RWA's Application for Review is limited only to the Montana waiver. It should not be used as a vehicle for RWA to contest any and all issues or proceedings on which its members have differing viewpoints than T-Mobile.

^{21/} Petition for Reconsideration of T-Mobile, WC Docket No. 10-90, *et al.*, (filed Apr. 27, 2017).

^{22/} Reply to Opposition to Petition for Reconsideration of T-Mobile, WC Docket No. 10-90, *et al.* (filed May 26, 2017).

^{23/} 47 CFR § 1.115(b)(1).

^{24/} 47 CFR § 1.115(b)(2).

^{25/} Rural Wireless Association, Inc., Application for Review, WT Docket No. 16-319 (filed Jan. 23, 2017).

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Pursuant to Section 1.1206(b)(2) of the Commission's rules, an electronic copy of this letter is being filed for inclusion in the above-referenced docket. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

/s/ Steve B. Sharkey

Steve B. Sharkey
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